

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CAPITOL BODY SHOP, INC.,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE
COMPANY, ZURICH NORTH
AMERICA, INC., and UNIVERSAL
UNDERWRITERS INSURANCE
COMPANY,

Defendants.

Case No.: 3:18-cv-38-CWR-FKB

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Zurich American Insurance Company and Universal Underwriters Insurance Company remove this action to the United States District Court for the Southern District of Mississippi, Northern Division. The basis for federal subject matter jurisdiction is 28 U.S.C. § 1332(a)(1), as the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states. As further grounds for removal, said Defendants would show as follows:

Civil Action Removed

1. This action was commenced in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on December 18, 2017, and designated as Case No. 17-cv-00728 on the docket of that court. True and complete copies of all pleadings served to date on the Defendants are attached hereto as follows:

Exhibit 1: Notice of Service of Process;

- Exhibit 2: Summons;
- Exhibit 3: State Court Complaint;
- Exhibit 4: Capitol Body Shop's First Set of Interrogatories to Defendants; and
- Exhibit 5: Capitol Body Shop's First Request for Production of Documents to Defendants.

Facts Supporting Diversity Jurisdiction

2. Capitol Body Shop, Inc., is a Mississippi corporation with its principal place of business located in Hinds County, Mississippi.

3. Zurich American Insurance Company ("Zurich") is a New York corporation engaged in the insurance business with a principal place of business located in Cook County, Illinois.

4. Universal Underwriters Insurance Company ("Universal") is an Illinois corporation engaged in the insurance business with a principal place of business located in Cook County, Illinois.

5. "Zurich North America" is a trade style that has been employed by Zurich, Universal, and their affiliates. While the Complaint identifies "Zurich North America, Inc." as an insurance company affiliate of both Zurich and Universal, there exists no insurance company operating under this name, and "Zurich North America, Inc." is thus an improper party. If and to the extent that the court might consider "Zurich North America" or "Zurich North America, Inc." to be a party, this Notice of Removal should be deemed filed on behalf of "Zurich North America" and "Zurich North America, Inc." (in addition to Zurich and Universal).

6. As shown above, this is an action between "citizens of different states" for purposes of 28 U.S.C. § 1332(a)(1), as the Plaintiff is a citizen of Mississippi and Defendants are citizens of New York and Illinois.

Facts Supporting Jurisdictional Amount

7. This is an insurance dispute involving alleged hail, wind, and lightning damage to two of Plaintiff's commercial properties located in the Jackson area. Plaintiff is seeking compensatory damages to repair: the "effective destruction" of an approximately 24,000 square foot roof, consequential water intrusion and electrical damage, and replacement of a fence at 102 Raymond Road in Jackson; and significant damage to a 64,652 square foot roof and related damage at 4230 Lakeland Drive in Flowood. *See* Complaint at pp. 3 (¶ 10) and 7 (*Ad Damnum*, part A). Additionally, the Plaintiff is seeking "consequential and incidental damages, to include out-of-pocket costs associated with investigating and providing evidence;" the "award of *Veazley* damages, including but not limited to attorney's fees for prosecuting this action;" punitive damages; and "[i]nconvenience and aggravation damages." *Id.* at p. 7 (*Ad Damnum*, parts B through E). On these facts, the Defendants reasonably believe and aver that the amount in controversy exceeds \$75,000, exclusive of interests and costs, as required pursuant to 28 U.S.C. § 1332(a).

Timeliness of Removal

8. The Complaint was filed with the Circuit Clerk of Hinds County on December 18, 2017. Zurich was served with process on December 26, 2017, while Universal was served with process on December 20, 2017. Pursuant to 28 U.S.C. § 1446(b), "notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, ..." In consideration of the foregoing, this notice of removal, which is being filed within 30 days after service of the Complaint on each Defendant, is timely.

Notice to State Court

9. As required by 28 U.S.C. § 1446(d), Defendants hereby certify that, promptly after the filing of this Notice of Removal with this Court, written notice of the filing of the Notice will be given to all parties, and Defendants will file a notification of removal attaching a copy of this Notice of Removal with the Clerk of the Circuit Court of Hinds County, Mississippi. A copy of the notification to be filed with the state court clerk is attached as Exhibit 6.

State Court Record

10. In accordance with L.U.Civ.R. 5(b), the undersigned will cause an entire copy of the state court record to be electronically filed no later than 14 days from the date of removal.

WHEREFORE, PREMISES CONSIDERED, the Defendants respectfully pray that the Court will receive this Notice of Removal, place it upon the docket of this Court, and that the Circuit Court of the First Judicial District of Hinds County, Mississippi, will proceed no further with this action unless and until the case is remanded.

Date: January 19, 2018

Respectfully submitted,

s/ Jeffrey S. Dilley

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Certificate of Service

I, Jeffrey S. Dilley, do hereby certify that on January 19, 2018, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send a notification of such filing to all counsel of record.

s/ Jeffrey S. Dilley_____